

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In Re:

) Chapter 11

FV Steel and Wire,

Debtors¹,

) No. 04-22421

SETTLEMENT AGREEMENT

WHEREAS, on or about February 26, 2004, Sherman Wire Company (f/k/a DeSoto, Inc.) (the "Debtor") herein filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as amended (the "Bankruptcy Code"); and

WHEREAS, on or about August 19, 2004, the United States, on behalf of the Environmental Protection Agency (the "EPA"), filed a Proof of Claim against the "Debtor";

WHEREAS, the Proof of Claim asserts a claim, pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., for at least \$ 2,441,702.00 for unreimbursed environmental response costs incurred by the EPA at the Pascale Property Site ("the Site") located in Washington Township, New Jersey ("EPA Claim");

WHEREAS, the Proof of Claim was asserted as a general unsecured claim;

¹ The Debtors are the following entities: FV Steel and Wire Company, Keystone Consolidated Industries, Inc., DeSoto Environmental Management, Inc., J.L. Prescott Company, Sherman Wire Company f/k/a DeSoto, Inc. and Sherman Wire of Caldwell, Inc.

WHEREAS, the Debtor has asserted that it may have a claim against the United States Army ("Settling Federal Agency") pursuant to CERCLA, 42 U.S.C. § 9601 et seq., relating to the Site;

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve the EPA Claim and the matters addressed by this Settlement Agreement; and

WHEREAS, the parties hereto, without admission of liability by any party, agree that the matters addressed by paragraph 11 of this Settlement Agreement are any and all actual or potential, past, present or future, known or unknown, accrued or unaccrued, anticipated or unanticipated, asserted or unasserted actions, causes of action, suits, complaints, claims, judgments, counterclaims, cross-claims, third-party claims, third-party complaints, legal proceedings of any kind, administrative proceedings of any kind by the EPA pursuant to CERCLA referring or relating to the Site. The matters addressed in paragraph 11 include, but are not limited to, governmental claims, orders or requests of any nature, mediation, arbitration, demands, requests, actual or alleged liabilities, and actual or alleged duties and/or obligations of any kind, including, but not limited to, claims asserted by third parties with respect to cleanup, removal and remediation type actions under CERCLA arising out of anyone's use, storage, transportation or disposal of hazardous wastes or pollutants at the Site, or claims which arise from or relate to the discharge, dispersal, release, escape, seepage, migration or emission of pollutants from or which migrate to or from the Site including, but not limited to, third party claims for cleanup, removal or remediation of the Site and government mandated clean-up, removal or remediation actions at the Site including those cleanup, removal or remediation actions undertaken pursuant to any consent decree or other settlement with any governmental or quasi-governmental entity, including any groundwater remedy at the Site including

the activities of the United States Army, Standard Oil Development Company (now Exxon-Mobil Corp.), and Metals Disintegrating Company and their affiliates with respect to the Site.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. The EPA Claim shall be allowed as an Unsecured Claim in the amount of \$732,000.00, and paid as an Allowed General Unsecured Claim without discrimination in accordance with the terms and conditions of the Debtor's Plan of Reorganization, and the United States will be deemed to have withdrawn the EPA Claim for any amount in excess of \$732,000.00. In no event shall EPA's allowed claim be subordinated to any other allowed general unsecured claim pursuant to any provision of the Bankruptcy Code or other applicable law. Distributions received by EPA will either be: (a) deposited in site-specific special accounts within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the particular site for which a claim has been allowed, or be transferred by EPA to the EPA Hazardous Substance Superfund; or (b) be deposited into the EPA Hazardous Substance Superfund.

2. Payment by the Debtor on the EPA Claim shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 02-QD and U.S.A.O. file no. 90-7-1-1/2, in accordance with instructions provided by the United States to the Debtor after execution of this Settlement Agreement and in accordance with the terms and conditions of the Debtor's Plan of Reorganization. Any EFTs

received at the U.S. D.O.J. lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

3. Only the amount of cash received by EPA (or net cash received by EPA on account of any non-cash distributions) from the Debtor under this Settlement Agreement for EPA's allowed General Unsecured Claim, and not the total amount of the allowed claim, shall be credited by EPA to its account for the Site, which credit shall reduce the liability of non-settling potentially responsible parties to EPA for the Site by the amount of the credit.

4. As soon as reasonably practicable after the effective date of this Settlement Agreement, and consistent with subparagraph b., the United States, on behalf of the United States Army ("Settling Federal Agency"), shall:

a. Pay to the EPA Hazardous Substance Superfund \$1,098,765.00, in reimbursement of EPA's Response Costs at the Site.

b. If the payment to the EPA Hazardous Substance Superfund required by subparagraph a. is not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if this payment is not made within 120 days after the effective date of this Settlement Agreement, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

5. In the event that the payment required by Paragraph 4 is not made within 120 days of the effective date of this Settlement Agreement, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a),

commencing on the effective date of this Settlement Agreement and accruing through the date of payment.

6. The Parties to this Settlement Agreement recognize and acknowledge that the payment obligations of the Settling Federal Agency under this Settlement Agreement can only be paid from appropriated funds legally available for such purpose. Nothing in this Settlement Agreement shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

7. In consideration of the payments or distributions that will be made by the Debtor under the terms of this Settlement Agreement, and except as provided in paragraph 9, the United States, on behalf of EPA and the United States Army, covenants not to bring a civil action or take administrative action against Sherman Wire Company, (f/k/a DeSoto, Inc.), a Delaware corporation, as Debtor-in-Possession and in every other capacity, for itself and for its predecessors in interest, successors in interest, current and former subsidiaries, divisions, affiliates, directors, officers, shareholders, employees and assigns, other Debtors², and all persons and entities acting through or under any of them (hereinafter collectively "Debtor") pursuant to CERCLA, including §§ 106 and 107, relating to the Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Debtor of its obligations under this Settlement Agreement. This covenant not to sue extends only to the "Debtor" as defined above and does not extend to any other person. However, the United States agrees that it

² The Debtors are the following entities: FV Steel and Wire Company, Keystone Consolidated Industries, Inc., DeSoto Environmental Management, Inc., J.L. Prescott Company, Sherman Wire Company f/k/a DeSoto, Inc. and Sherman Wire of Caldwell, Inc.

will not make any claims against any insurance carriers of Debtor in their role as insurance carriers for Debtor with respect to the Site.

8. In consideration of the payments that will be made by the Settling Federal Agency under the terms of this Settlement Agreement, and except as provided in Paragraph 9, the

EPA covenants not to bring an administrative action against the Settling Federal Agency pursuant to CERCLA, including §§ 106 and 107, relating to the Site. EPA's covenant extends only to the Settling Federal Agency and does not extend to any other person.

9. The covenants not to sue set forth in Paragraphs 7 and 8 do not pertain to any matters other than those expressly specified in this Settlement Agreement.

a. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against the Debtor with respect to all other matters, and specifically with respect to: claims based on a failure by the Debtor to meet a requirement of this Settlement Agreement; and claims for any site other than the Pascale Property Site.

b. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against the Settling Federal Agency with respect to all other matters, and specifically with respect to: claims based on a failure by the Settling Federal Agency to meet a requirement of this Settlement Agreement; and claims for any site other than the Pascale Property Site.

10. The United States acknowledges that the bar date for filing any further governmental proofs of claim has passed.

11. With regard to claims for contribution against the Debtor or the Settling Federal Agency for matters addressed in this Settlement Agreement, the Debtor and the Settling

Federal Agency are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

12. The Debtor covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of or response activities at the Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

13. The Settling Federal Agency hereby agrees not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, 114 or any other provision of law with respect to the Site.

14. Except as specifically provided in Paragraphs 7 and 8, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

15. Debtor's entry into this Settlement Agreement will be subject to Bankruptcy Court approval pursuant to Bankruptcy Rule 9019. Debtor agrees to exercise its best efforts to obtain the approval of the Bankruptcy Court. This Settlement Agreement will also be submitted for public comment following notice of the Settlement Agreement in the Federal Register. The United States reserves the right to withdraw or withhold its consent if the public comments regarding the Settlement Agreement disclose facts or considerations which indicate that the Settlement Agreement is inappropriate, or improper, or inadequate.

16. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall be deemed an admission of any fact or waiver of any right of either party with respect to the matters contained herein.

17. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

FOR THE UNITED STATES OF AMERICA

9.16.05
Date

JOHN E. CRUDEN
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

9/22/05
Date

DEANNA J. CHANG
DAVID L. GORDON
Environmental Enforcement Section

9/26/05
Date

MICHAEL D. ROWE
Environmental Defense Section

Date 7/29/05

~~WILLIAM~~ McCABE, Acting Director
Emergency Response and Remediation Division
~~U.S. EPA, Region 2~~

Date 7/18/05

CLAY MONROE
Assistant Regional Counsel
U.S. EPA, Region 2

FOR DEBTOR

6/30/05
Date

SHERMAN WERE COMPANY
5430 LBJ FREEWAY, SUITE 1140
DALLAS, TEXAS 75240

Address

Telephone Number

By:

BERNARD E. DOWNING, JR.
Name of Officer (please type or print)

Signature of Officer

V.P.
Title